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COMMITTEE
OF
CONCERNED EPISCOPALIANS

TO: The Most Rev. Edmund L. Browning
Presiding Bishop, ECUSA
New York, NY

NOV. 4 1987

SUBJECT: Reclamare, in that the Presentment naming Bishop John S. Spong was dismissed without proper canoncical authority.

A. The Committee of Concerned Episcopalians respectfully submits that because of certain errors in commission of canonical authority and other compelling reasons provided below, the Presiding Bishop has no alternative except to set aside the report by the Committee of Seven Bishops, Exhibit A, (hereinafter referred to as the Gray Committee, and its report as the Gray Report) and to treat the Bishop Spong Presentment, Exhibit B, de novo.

B. Quo Warranto. It is important to establish the precise authority of the Gray Committee, this is provided at Exhibit C, which is the singular and only reference in the Canons to the committee's authority, and is quoted as follows (all references to canons are those relating to the National Church, adopted 1789-1985):

1. Canon IV. 4. Section 5.: "The Presiding Bishop, upon receipt of such written charges . . . , shall summon not less than three nor more than seven Bishops, and unless a majority of them shall determine that such charges, if proved, would constitute no cononical offense, they shall select a Board of Inquiry . . ."

2. Thus, by canons, the Gray Committee's sole authorities are but two:

a. Determine if the charges, if proven, would constitute canonical offenses.

b. If yes to the preceding, to select a Board of Inquiry.

C. THE GRAY REPORT - ERRORS OF COMMISSION

Preface: All references below are to Exhibit A; Roman numeral paragraph numbering was added to Exhibit A by the authors of this report.

1. Reference paragraph I: "The Presiding Bishop, on September 21, 1987, received a Presentation filed against Rt. Rev. John S. Spong, . . ."
COMMENT: The Presentment was received September 18, 1987, not September 21, 1987 - see Exhibit D. Thus, error is introduced at the very outset of the Gray report, making the rest of the report suspect.

2. Reference paragraph II: ". . . In essence, the charges are as follows." (Then each of the eleven counts in the Presentment, Exhibit B, are paraphrased.)
COMMENT: It is not only irregular but highly improper to paraphrase accusations because in so doing inference is added and the original meaning is lost. Consequently, this paragraph of the Gray report is invalid, and all subsequent conclusions and decisions drawn from the paragraph are equally invalid.

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3. Reference paragraph II 7. " (a) Teaching erroneous doctrine as in #4, and (b) condemning "religious security" as a vice."
COMMENT: The Gray Committee unilateraly and illegally gave itself the authority to rewrite the Presentment when it took it upon itself to divide this Count into its two constituent elements, and treated each element independently. The two elements of the Count were presented together because they are meant to be considered together, not to be considered separately. Thus the Gray committee gave itself procedural license unfound in the canons, making this paragraph and all conclusions and decisions derivied from it invalid. See Exhibit E.

4. Reference paragraph III A): " 1, 2, 3, 4, and 5 are in essence charges of holding and teaching doctrine contrary to that held by the Church."
COMMENT: The Gray Committee has no canonical authority (see above paragraphs B.2.a., and B.2.b.) to change the stated offenses in the Presentment, nor does the Gray Committee offer any explanation as to how it assumed it had such authority. Consequently, this paragraph is invalid, and all conclusions and decisions drawn therefrom must also be invalid. See Exhibit E, Discussion, and paragraph E below.

5. Reference paragraph III C): " 11 is a reiteration of the first ten charges."
COMMENT: If 11 were truly a reiteration of the first ten charges, then Count 11 would contain all that was stated in the first 10 Counts. This not being the case, the Gray Committee is in error, and anything derived from this paragraph must be disregarded.

6. Reference paragraph III D). " 7b and 10, if proved, would constitute no canonical offense.
COMMENT: As shown in our paragraph C3 above, 7b cannot be examined alone, because it was not presented alone. Accordingly, this portion of the Gray report is erroneous and must be disregarded.
Count 10 essentially states that one-sided criticism of the Church is conduct unbecoming a member of the clergy; it is difficult to believe that the Gray Committee finds it otherwise. More importantly, the Gray report gives no reason at all for its finding. Consequently, this finding is without foundation and must therefore be reconsidered.

7. Reference paragraph IV. This paragraph depends upon its predecessor paragraph III A) which has already been shown to be invalid (para. 4 above). Thus the conclusion of this paragraph is invalid.

8. Reference paragraph V. "As charges 6, 7a, 9, and 11 are redundant and cumulative to other charges, they are stricken."
COMMENT. Charges of any kind must only be stricken for good and substantive cause. To use "redundant and cumulative" as reasons to strike down charges borders on frivolous, if not recklessness. Accordingly, this action is nonlicit and must be set aside. See Discussion, Exhibit E.

9. Reference paragraphs V, VI, and VII, wherein the words, ". . . they are stricken . . ." and, " . . . the Presentment is dismissed."

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Reclamare (cont'd)

8. (cont'd)
are used. Nowhere in the canons is the Gray committee authorized to "strike' or "dismiss" anything. Here again, the Gray committee took license not authorized by canons.

D. GRAY REPORT - ERROR OF OMMISSION

1. It is noted that the Gray report falls silent on any conclusion with respect to Count 8, thus, the report is incomplete. An incomplete report cannot be conclusive, therefore, the Gray report is both incomplete and inconclusive.

E. It is noted in Canon IV. 3. Sec. 21., "No determination or judgement of any court shall be disturbed for technical errors not going to the merits of the cause."
COMMENT. Although the Gray report is not a court determination, we would like to believe that the spirit of the preceding quote would be carried over to proceedings like that of the Gray committee. If that were the case, then the Gray report's finding in paragraph IV, which is indeed based on an alledged technical error, would be dismissed out of hand because it does not go to the merits of the cause. Accordingly, the entire Gray report would be dismissed.

F. In the aforegoing paragraphs we have conclusively and incontrovertibly shown that the Gray committee exceeded its canonical authority and committed errors of both commission and omission. Taken singularly, almost any one of the aforegoing errors would be sufficient cause to set the Gray report aside. Taken collectively, the action to set the Gray report aside becomes not only compelling but also imperative.

G. A verbis legis non est recendum. The Presiding Bishop, more than any other member of ECUSA, is mandated to demonstrate by example that he upholds the letter and the spirit of the Church canons; to do otherwise would be disasterous to the Church and Church discipline.

H. Minatur innocentibus qui nocentibus. We are confident that the Presiding Bishop, having tested our report, will find it in order and its conclusions not only properly based in canons, but sound and irrefutable.

I. As the preceding paragraphs indicate, it is abundantly plain that the Gray committee did not show that the charges, Exhibit B, if proved would constitute no canonical offense. That being the case, Canon IV. 4. Sec. 5., must be invoked, i.e., select a Board of Inquiry of five Presbyters and five Laymen.

J. It should be noted that nothing in this report is meant to reflect unfavorably upon the honesty and integrity of the Gray committee.

Respectfully submitted,

George T. Smith-Winnes
Executive Director

cc: Presentment signers
Members of the House of Bishops
Bishops Belshaw and Pettit